

EDWIN O. HORN)	
Claimant)	
)	
VS.)	Docket No. 241,878
)	
CITY OF TOPEKA)	
Self-Insured Respondent)	

The claimant argues the Board has no jurisdiction to consider this matter as the ALJ has exclusive jurisdiction over these sorts of interlocutory matters. Assuming there is jurisdiction, the claimant believes the ALJ has the statutory authority to request an independent medical examination as well as any follow-up inquiry. The claimant maintains the ALJ's goal is to afford the parties a reasonable opportunity to be heard and present

evidence and should not be bound by the technical rules of procedure, consistent with the principles set forth in K.S.A. 44-523.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The underlying facts are undisputed. Claimant filed an application for review and modification. That matter was heard on March 15, 2004 and during that proceeding, the ALJ set claimant's terminal date for April 14, 2004 and the respondent's for May 14, 2004.

In a letter dated May 14, 2004, respondent's counsel informed the ALJ that all of the testimony had been completed but that some of the transcripts had not yet been received. Counsel for respondent requested that the ALJ delay any decision until such time as the deposition transcripts could be received and reviewed. The ALJ directed counsel to file his submission brief without waiting for the transcripts. Thereafter, respondent filed its submission brief on May 21, 2004 and claimant filed his last submission brief on May 24, 2004.

On May 27, 2004, the ALJ entered an order extending both parties' terminal dates and sent out letters to Dr. Bieri and to the parties' counsel. The letter to Dr. Bieri noted the doctor's prior report dated December 5, 2003 and his subsequent deposition. It also posed additional questions to the doctor regarding his use of the A.M.A. *Guides* and specifically whether Dr. Bieri utilized the 3rd edition of the *Guides*. The parties' counsel was sent a copy of this letter.

The ALJ also posed certain written factual questions to counsel bearing on the issue of a potential retirement offset under K.S.A. 44-501(h). These questions make it clear that the evidence offered by the parties does not adequately speak to the issue the ALJ is required to decide.

The principal question presented by this proceeding is whether the ALJ can reopen the record and extend the terminal dates after the parties have submitted the case for decision for the purpose of requesting additional information from the court ordered independent medical examiner and from the parties' themselves. However, the initial issue that the Board must address in this case is whether it has jurisdiction to review the ALJ's Order Extending Terminal Dates. After reviewing the briefs of the parties, the Board finds and concludes that it does not have jurisdiction to review this particular matter at this juncture of the proceedings.

The ALJ's decision to extend terminal dates and request additional information from the court ordered independent medical examiner and/or from the parties is interlocutory in nature, and made during the litigation of a workers compensation case that is before the

ALJ. This is neither a final order that can be reviewed pursuant to K.S.A. 44-551, nor an order entered pursuant to the preliminary hearing statute, K.S.A. 44-534a, as preliminary hearing orders are limited to issues of furnishing of medical treatment and payment of temporary total disability compensation. The Order Extending Terminal Dates now before the Board pertains to an interlocutory matter, over which an ALJ, pursuant to K.S.A. 44-523(c) has authority to order during the litigation of a workers compensation case.

WHEREFORE, it is the finding, decision and order of the Board that the application for review filed by the respondent is dismissed. The Order Extending Terminal Dates entered on May 27, 2004, by Administrative Law Judge Brad E. Avery, remains in full force and effect.

IT IS SO ORDERED.

Dated this _____ day of July 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John J. Bryan, Attorney for Claimant
Matthew S. Crowley, Attorney for Self-Insured Respondent
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director